



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2016-0028; FRL-9945-78-Region 9]

#### Approval of Air Plan Revisions; Arizona; Rescissions and Corrections

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Arizona State Implementation Plan (SIP) under the Clean Air Act. These revisions include rescissions of outdated test methods and performance test specifications. The intended effect is to rescind unnecessary provisions from the applicable SIP.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established docket number EPA-R09-OAR-2016-0028 for this action. The index to the docket is available electronically at [www.regulations.gov](http://www.regulations.gov) and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., Confidential Business Information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Andrew Steckel, EPA Region IX, (415) 947-

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**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to the EPA.

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### **I. Background for Final Rule**

On February 11, 2016 (81 FR 7259), we proposed to approve revisions to the Arizona SIP under the Clean Air Act (CAA or “Act”) and provided a 30-day comment period. The revisions include rescissions of certain statutory provisions, administrative and prohibitory rules, and test methods. The EPA also proposed to correct certain errors in previous actions on prior revisions to the Arizona SIP and to make certain other corrections.

On that same date, we issued a direct final rule (81 FR 7209) taking final action effective April 11, 2016 but indicated that, if we received adverse comments by the end of the comment period, we would publish a withdrawal of the direct final rule in the **Federal Register** prior to the effective date informing the public that the direct final rule will not take effect. The February 11, 2016 proposed rule indicated that if the EPA received adverse comment on an amendment, paragraph, or section of the direct final rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the

subject of an adverse comment.

We received a timely adverse comment on a specific test method for which we had approved rescission and found that our action on the test method (and other test methods and performance test specifications from the same approved SIP revision submittal) could be severed from the rest of the rule. Thus, we published a partial withdrawal of the direct final rule in the **Federal Register** at 81 FR 19495 (April 5, 2016), affecting only the action as it relates to the test method for which the comment was received (and the other test methods and performance test specifications that were submitted and approved on the same dates as the test method in question). In today's action, we provide our response to the public comment and take final action to approve the rescissions of the outdated test methods and performance test specifications based on the proposal published on February 11, 2016.

## **II. Summary of Proposed Rule**

In our February 11, 2016 proposed rule (81 FR 7259), we directed commenters to the direct final rule for a detailed rationale for the proposed approval of the SIP revisions and for the proposed corrections. As such, the following paragraphs summarize the background information and evaluation included in the direct final rule also published on February 11, 2016 (81 FR 7209) as it relates to the test methods and performance test specifications that are the subject of this final rule.

On March 10, 2015 and January 13, 2016, the Arizona Department of Environmental Quality (ADEQ) submitted rescissions of certain statutory and regulatory provisions from the applicable Arizona SIP. Under CAA section 110(k)(3), the EPA is obligated to approve, disapprove, or conditionally approve SIPs and SIP revisions, including rescissions. As noted

above, the rescissions relate to certain statutory provisions, administrative and prohibitory rules, and test methods. In our February 11, 2016 direct final rule (81 FR 7209), we approved all of the rescissions included in the two SIP revisions except for certain test methods and performance test specifications, for which we withdrew direct final action. In our direct final rule, we also corrected certain errors in previous actions on prior revisions to the Arizona SIP and to make certain other corrections, but because no adverse comments were received on the corrections, we did not withdraw any part of the error corrections portion of the direct final rule.

Table 1 lists the test methods and performance test specifications the rescission of which we withdrew direct final action, the dates on which the EPA approved the provisions as part of the SIP, and the dates on which ADEQ submitted the rescissions to the EPA.

**Table 1 – Arizona SIP Regulatory Provisions that ADEQ has Rescinded**

<b>Regulatory Provision</b>	<b>Title</b>	<b>EPA Approval</b>	<b>Rescission Submittal Date</b>
Arizona Testing Manual for Air Pollutant Emissions, Section 3.01	Method 1 Sample and Velocity Traverses for Stationary Sources	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.02	Method 2 Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.02	Method 2A Direct Measurement of Gas Volume Through Pipes and Small Ducts	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.02	Method 2B Determination of Exhaust Gas Volume Flow Rate from Gasoline Vapor Incinerators	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing	Method 3 Gas Analysis for	47 FR 17483 (April	January 13,

Manual for Air Pollutant Emissions, Section 3.03	Carbon Dioxide, Excess Air, Dry Molecular Weight	23, 1982)	2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.03	Method 3A Determination of Oxygen and Carbon Dioxide Concentrations in Emissions from Stationary Sources (Instrumental Analyzer Procedure)	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.04	Method 4 Determination of Moisture in Stack Gases	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.05	Method 5 Determination of Particulate Emissions from Stationary Sources	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.06	Method 6 Determination of Sulfur Dioxide Emissions from Stationary Sources	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.07	Method 7 Determination of Nitrogen Oxide Emissions from Stationary Sources	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.08	Method 8 Determination of Sulfuric Acid Mist and Sulfur Dioxide Emissions from Stationary Sources	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.09	Method 9 Visual Determination of the Opacity of Emissions from Stationary Sources	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.10	Method 10 Determination of Carbon Monoxide Emissions from Stationary Sources	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.13	Method 13B Determination of Total Fluoride Emissions from Stationary Sources – Specific Ion Electrode Method	47 FR 17483 (April 23, 1982)	January 13, 2016

Arizona Testing Manual for Air Pollutant Emissions, Section 3.13	Method 13 Determination of Total Fluoride Emissions from Stationary Sources – SOADNS Zirconium Lake Method	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.14	Method 14 Determination of Total Fluoride Emissions from Potroom Roof Monitors for Primary Aluminum Plants	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.15	Method 15 Determination of Hydrogen Sulfide, Carbonyl Sulfide, and Carbon Disulfide Emissions from Stationary Sources	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 3.17	Method 17 Determination of Particulate Emissions from Stationary Sources (In-Stack Filtration Method)	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 4.01	Performance Specification 1: Performance specifications and specification test procedures for transmissometer systems for continuous measurement of the opacity of stack emissions	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 4.02	Performance Specification 2: Performance specifications and specification test procedures for monitors of SO <sub>2</sub> and NO <sub>x</sub> from stationary sources	47 FR 17483 (April 23, 1982)	January 13, 2016
Arizona Testing Manual for Air Pollutant Emissions, Section 4.03	Performance Specification 3: Performance specifications and specification test procedures for monitors of CO <sub>2</sub> and O <sub>2</sub> from stationary sources	47 FR 17483 (April 23, 1982)	January 13, 2016

As explained in our February 11, 2016 direct final rule, in April 1982, the EPA approved sections 3 and 4 of the Arizona Testing Manual for Air Pollutant Emissions (“Arizona Testing

Manual”) as a revision to the Arizona SIP. Section 3 of the Arizona Testing Manual includes certain test methods from 40 CFR part 60, appendix A, and section 4 of the Arizona Testing Manual includes certain performance test specifications from 40 CFR part 60, appendix B. Both the test methods and performance test methods approved into the Arizona SIP date from the 1970s.

Over the years, the EPA’s test methods and performance test specifications in 40 CFR part 60 have been revised, and thus, the versions of the test methods and performance test specifications approved as part of the Arizona SIP are outdated. Also, in recent years, the EPA has approved two state rules that in effect incorporate more recent versions of the EPA’s test methods and performance test specifications into the Arizona SIP. See Arizona Administrative Code (AAC) R18-2-311 (“Test Methods and Procedures”) and appendix 2 (“Test Methods and Protocols”) for AAC, title 18, chapter 2.<sup>1</sup> See 80 FR 67319 (November 2, 2015) and 79 FR 56655 (September 23, 2014). As such, the outdated test methods and performance test specifications approved as part of the Arizona Testing Manual need not be retained in the Arizona SIP. Thus, we found ADEQ’s rescission of the outdated test methods and performance test specifications to be acceptable, and, under section 110(k), we proposed to approve the state’s rescission of them from the Arizona SIP.

For further information about the SIP revisions and our corresponding evaluation, please see our direct final rule (81 FR 7209, February 11, 2016).

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<sup>1</sup> R18-2-311 provides that applicable procedures and testing methods contained in, among other references, 40 CFR part 60, appendices A through F, shall be used to determine compliance with state requirements for stationary sources. Appendix 2 for AAC, title 18, chapter 2 incorporates by reference 40 CFR part 60 appendices revised as of July 1, 2006.

### **III. Public Comments and EPA Responses**

Our February 11, 2016 proposed rule provided for a 30-day comment period. During that period, we received a comment from a member of the public. Staff at EPA Region 9 contacted the commenter to clarify this comment on March 22, 2016. Our response to this comment is provided below.

*Comment:* All legacy permits and emission sources administered under this [SIP] should allow the use of EPA Method 9 and/or EPA Broadly Applicable Alternative Method 082 for the measurement of opacity and evaluation of visible emissions. All new sources regulated under this plan should require the use of EPA Alternative Method 082 for the measurement of opacity and the evaluation of visible emission sources. People complain about what they can see and smell and the use of digital-camera-based visible emission evaluation is the best means to ensure public participation and support. The EPA declared ASTM D7520's Digital Camera Opacity Technique (DCOT) the Best Available Measurement Technology for visible emissions in the Ferroalloy Production NESHAP rule and this example should be followed in all State Implementation Plans.

*EPA Response:* Under the existing SIP, EPA Method 9 is already allowed to be used. In fact, under the existing SIP, two versions of EPA Method 9 are approved for use: the version of EPA Method 9 approved at 47 FR 17483 (April 23, 1982) and the updated version of EPA Method 9 approved through approval of AAC R18-2-311 and appendix 2 for AAC, title 18, chapter 2, which incorporates by reference 40 CFR part 60 appendices (including EPA Method 9) revised as of July 1, 2006. Our approval of the state's rescission of the 1982 approved version of EPA



Method 9 simply deletes that version from the SIP. The more current version of Method 9 continues to apply under the SIP.

As far as alternative methods are concerned, AAC R18-2-311, which as noted above has been approved as part of the Arizona SIP, *does* provide for alternatives to EPA Method 9, but the alternative method so provided for does not include Broadly Applicable Alternative Method 082. More specifically, AAC R18-2-311(B) provides that a permit may specify a method, other than EPA Method 9, for determining the opacity of visible emissions from a particular emission unit, if the method has been promulgated by the EPA in 40 CFR part 60, appendix A. The EPA has approved and promulgated in 40 CFR part 60, appendix A only one alternative to Method 9: “Alternative Method 1 – Determination of the Opacity of Emissions from Stationary Sources Remotely by LIDAR.” Thus, Alternative Method 082 is not specifically provided for under the Arizona SIP at the present time.<sup>2</sup> The rescission of an outdated version of EPA Method 9 has no effect on the status of Alternative Method 082 in the Arizona SIP.

We do recognize that the EPA has approved Alternative Method 082 as an alternative to EPA Method 9 with certain limitations and for certain purposes. Alternative Method 082 specifies, with certain limitations, the use of American Society for Testing and Materials (ASTM) D7520-09 “Standard Test Method for Determining the Opacity of a Plume in the Outdoor Ambient Atmosphere” as an alternative to EPA Method 9 for sources subject to 40 CFR 60, 61, and 63. See 77 FR 8865 (February 15, 2012). We also note that the National Emissions Standards for Hazardous Air Pollutants (NESHAPS) for the Ferroalloys Production source

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<sup>2</sup> We note, however, that under SIP-approved AAC R18-2-312 (“Performance tests”), data collected using other methods, such as Alternative Method 082 or ASTM D7520, may be used as evidence of compliance with applicable good maintenance and operating requirements.

category was recently amended following the EPA's request for comments on the use of new technologies to provide continuous or near continuous long term approaches to monitoring emissions from industrial sources for the Ferroalloy Production source category. After consideration of comments received and after evaluating the technologies, the EPA amended the Ferroalloys Production NESHAPS to, among other things, replace the weekly Method 9 opacity requirement with a weekly requirement to measure opacity using ASTM D7520-13 (i.e., an updated version of ASTM D7520-9) and the digital camera opacity technique (DCOT) to demonstrate compliance with the process fugitives standards. See 80 FR 37366 (June 30, 2015).

However, use of Alternative Method 082's or ASTM D7520's digital camera technology by states to determine opacity of visible emissions is not a requirement for SIPs. The State of Arizona could consider a revision to its rules to allow the use of Alternative Method 082 (for appropriate applications and with appropriate limitations) or the most current version of ASTM D7520 if it chooses to do so, as long as the use of the DCOT in lieu of EPA Method 9 is consistent with EPA's approval of ASTM D7520-09 in Alternative Method 082. We generally support its inclusion in State programs where appropriate. The EPA would take action to approve or disapprove such a revision under CAA section 110(k) if the state were to adopt such a revision and submit it to the EPA as a SIP revision.

#### **IV. Final Action**

Pursuant to CAA section 110(k)(3), the EPA is approving the state's rescission of the outdated test methods and performance test specifications listed in Table 1 from the Arizona SIP because we believe they are no longer necessary to retain.

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely rescinds outdated test methods and performance test specifications as unnecessary to retain in the applicable SIP and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT**

**DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 15, 2016.

Jared Blumenfeld,  
Regional Administrator,  
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52 -- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart D – Arizona**

2. Section 52.120 is amended by adding paragraph (c)(29)(i)(B) to read as follows:

**§52.120 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(29) \* \* \*

(i) \* \* \*

(B) Previously approved on April 23, 1982, in paragraph (c)(29)(i)(A) of this section and now deleted without replacement: Arizona Testing Manual for Air Pollutant Emissions, Sections 3.0 and 4.0.

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